IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIV. CONTEMPT PET. No. 2 of 2006

LRS OF SMT. PADMA RANI

V/S

CHANDRA PRAKASH

Mr. RK THANVI, for the appellant / petitioner

Mr. CHANDRA PRAKASH, contemner present in person along with his counsel Mr. VK BHADU.

Date of Order : 17.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

This contempt petition has been filed on 12.1.2006 alleging inter alia that a decree for eviction was passed by the learned trial court on 1.2.2005 against that decree an appeal being First Appeal No. 91/2005 was filed before this Court which came up for hearing on 27.4.2005. On that day counsel for the respondent who was also appearing, and after arguing the matter at length both the learned counsel agreed that the impugned decree may be maintained with the modification that the time granted by the learned trial court for vacating the premises being two months be extended for a period of six months from that date,and for this period of six months the appellant will pay an amount

of Rs. 8000/- per month by way of damages for use and occupation. It may be noticed here that as appears from Annexure-1, the certified copy of the judgment of the learned trial court that the monthly rent of the premises as agreed was Rs. 8000/- per month.

Accordingly, the appeal was dismissed on 27.4.2005 with the agreed modification on the condition of the appellant paying Rs. 8000/- per month for use and occupation, and giving undertaking in the trial court within one month to handover vacant possession to the plaintiff respondent. It is alleged that accordingly the contemner gave an undertaking in the trial court on 27.5.2005 undertaking to deliver vacant peaceful possession voluntarily on 26.10.2005. It is alleged that notwithstanding this undertaking having been given, the same has not been complied with, and even the possession of the premises has not been delivered, nor the amount as stipulated has been paid. Thus, the contemner is guilty of gross contempt of the orders of this Court dt. 27.4.2005.

Notice of this contempt petition was ordered to be issued vide order dt. 27.2.2006, and the matter came up on 5.4.2006, that day Mr. Bhadu appeared for the contemner, and prayed for time to file reply to the contempt petition. However, no reply has been filed, rather on 3.5.2006 Mr. Bhadu prayed for further time to file reply. However, in

view of what transpired on 3.5.2006, being that the order dt. 27.4.2005 has not been complied with, the contemner was directed to remain personally present on 1.6.2006, if by then the order is not complied with. Then, on 1.6.2006, the contemner appeared in person, and submitted an application in the office, for unconditional apology, alleging inter alia, that the respondent had handed over possession of the shop in dispute to the petitioner, and regarding rent (for use and occupation of the premises) of the shop, an undertaking was given before the Executing Court that due to bad financial conditional arrears of rent will be deposited in four instalments. It is not disclosed as to when that undertaking was given, and whether even that undertaking has been complied with or not. Be that as it may, on 1.6.2006 Mr. Bhadu submitted that the contemner be granted one more opportunity to deposit all arrears before hearing the contempt matter. Accordingly the matter was adjourned to 4.7.2006. However, the matter came up on 7.7.2006. On that day it was informed that the contemner is suffering from cardiac problem, therefore, he could not appear, and prayed for time. Accordingly, the matter was adjourned to 14.7.2006. On that day the learned counsel Mr. Bhadu was said to be not well though contemner also did not appear. Then, the case was adjourned to 17.7.2006. On 17.7.2006, Mr. Bhadu informed that the contemner has sustained heart attack, and therefore, is hospitalised, and as such he could not appear, therefore, the case was

adjourned to 25.7.2006. Then, on 25.7.2006, learned counsel Mr. Bhadu informed that the contemner has not recovered, and as per medical advise he has not come, and accordingly the case was ordered to be put up on 2.8.2006. However, for one reason or the other the matter could not be taken up, and the case has come up today. Today the contemner is also present, and as noticed above, no reply has been filed except the application for apology that was filed on 1.6.2006. Thereafter even till the date no reply has been filed.

Replying the contentions of the learned counsel for the applicant, it was submitted, that the possession of the premises has been handed over, and apology has been tendered on 1.6.2006, and therefore, relying upon the judgment of Orissa High Court in Sukadev Singh Vs. State Transport Authority reported in 1983 Cr.L.J.528, it was submitted, that since even before receipt of the notice the possession of the premises has been handed over, and realising the mistake, apology has been tendered, and that should be accepted, as it is a bonafide apology, given by the contemner.

On being asked as to whether the possession was delivered voluntary to the plaintiff, it was informed, that the possession was received by the decree holder by executing the decree, in which execution proceedings the

undertaking was given to pay the arrears in four instalments. Learned counsel read to me the undertaking, and therefrom it transpires, that in that undertaking, in para-1 it is alleged, that Chandra Prakash is not in possession, and as a matter of fact Tarsem Chand is in possession of the shop in dispute by way of old possession, and is running business in the name and style of Jai Ambay Agencies, and that the decree holder in the garb of Chandra Prakash wants to dispossess the independent possessor Tarsem Chand, who is in within the knowledge of the decree holder. With this it is alleged in para-2, that the amount which is required to be deposited could not be deposited in view of the bad financial condition in one go, and it would be deposited by the judgment debtor after three months in four monthly instalments. This undertaking was given on 3.2.2006.

In my view, after hearing the learned counsel for the parties, it is clear, that the contemner is guilty of civil contempt, within the meaning of Section 2(b) of the Contempt of Courts Act, 1971, having willfully committed breach of the undertaking given to the court, being Annexure-4, which was in compliance of the order of this Court Annexure-2, and a look at the order Annexure-2 shows, that thereby, with consent of the parties, six months further time was granted on the condition of the defendant paying Rs. 8000/- per month for this period as well, and

giving an undertaking to deliver vacant possession to the plaintiff on completition of aforesaid period, and in Annexure-4, the contemner had clearly udertaken, in compliance of the order of this Court Annexure-2, to deliver vacant possession, on or before 26.10.2005 voluntarily, and without any obstruction. As against which, admittedly the possession has not been delivered by the contemner, and even after filing of the present contempt petition, which was filed much after expiry of period stipulated, and it was in execution of the decree that the plaintiff could recover possession, and in those proceedings the contemner had projected a version about the premises being in actual possession of Tarsem Chand, meaning thereby that the contemner intended to even obstruct the execution of the decree regarding possession. Thus, a clear case of contempt is made out, and the contemner is found guilty of the contempt in committing willful breach of the undertaking being Annexure-4.

Coming to the apology, true it is that apology has been tendered, but then, in my view, it is clear that the apology completely lacks bonafide, inasmuch as, as is clear from the undertaking given by the contemner in the Executing Court that he even meant to obstruct recovery of possession by the decree holder, much less did he voluntarily deliver possession, even belatedly. Then, in order to mitigate the contempt, the contemner could, and

should, have paid all arrears of rent, during pendency of this contempt proceedings, and thereby should have earned some sympathy of the Court, in taking a lenient view in the matter of punishment, or in the direction of accepting the apology. As against this from the sequence of the proceedings of this Court as catalogued above, it is clear, that despite seeking time repeatedly, admittedly payment has not been made. Thus, the contemner has not mitigated the contempt, nor has he taken any step to show that the alleged apology is in any manner bonafide. It is a different story that even undertaking given in the Executing Court to pay the amount, after three months, in four monthly instalments, has also not been complied with, as even the entire period stipulated in that undertaking has also expired. However, as breach of that undertaking is not subject matter of this contempt petition, I do not take any cognizance thereof, however, this much at least is clear from above, at the cost of repetition, that the contemner has not taken any step to mitigate the contempt, or earn sympathy of the Court, or show bonafide in his apology. In that view of the matter, I do not feel persuaded to accept the apology either.

Accordingly, the contempt petition is allowed. The contemner is held guilty of having committed willful breach of the undertaking given in compliance of the order of this Court dt. 27.4.2005, as defined in Section 2(b) of the

Contempt of Courts Act. Since in view of the above conduct of the contemner, and in the totality of circumstances, in my view, even mere imposition of fine will not meet the ends of justice, rather the sentence of imprisonment is necessary, accordingly, the contemner is sentenced to six months simple imprisonment, and a fine of Rs. 1000/-, in default he will further undergo simple imprisonment for a period of two weeks. The contemner be taken custody to serve out the sentence.

(N P GUPTA),J.

/Sushil/